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09/932,687	08/17/2001	Thomas Schulte	MICRO1200	5022

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EXAMINER

DRODGE, JOSEPH W

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/932,687**

Applicant(s)

**SCHULTE ET AL**

Examiner  
**JOSEPH DRODGE**

Art Unit  
**1723**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 24, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14, 27-31, and 39 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-31 and 39 is/are allowed.
- 6) ☒ Claim(s) 1 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 2-11 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 8
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 9
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Election/Restriction*

1. Applicant's election without traverse of claims 1-14 and 27-32 in Paper No. 6 is acknowledged.

### *Claim Rejections - 35 U.S.C. § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1 and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Pfost et al patent 6,485,690.

Pfost et al disclose a device comprising a well plate 16 and adjacent, contacting (column 9, lines 31-39) microfluidic structure layer 14 with microchannels 26 and ports 28 which interconnect a plurality of the wells 30 (figures 9 and 10 and column 7, lines 49-56) within such well plate in that

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fluids are delivered simultaneously to the wells through the microchannels (see also column 5, line 62-column 6, line 21 and column 10, lines 42-47).

Regarding claim 12, see for example column 19, lines 44-46 concerning plural well plates , each having arrays with large numbers of wells.

Regarding claim 13, see column 19, lines 50-56 concerning connecting of at least four wells with each microchannel.

Regarding claim 14, see discussion of plural microfluidic structures in column 16, line 67 through column 17, line 17.

*Allowable Subject Matter*

4. Claims 2-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 2-10 distinguish over Pfof et al in view of recitation of an “H-filter” and now distinguish over Dubrow et al ‘336 of record, in view of recitation in claim 1 of the microfluidic structure containing a circuit as **adapted for contact** with the well plate.

Claim 11 continues to distinguish in view of recitation of a well of the plate having a bottom which is higher than that of at least one other well on such plate. Pfof et al only teach identical wells for each plate.

5. Claims 27-31 and 39 are allowed.

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Claims 27-31 are deemed to distinguish in view of recitation of a “microfluidic card...card being sized and adapted for contact with the well plate such that at least one port of each circuit is connected to at least one well. Pfof et al instead teach microfluidic channel containing layers which are constructed as discrete layers, not as cards having microcircuits within, as claimed.

Claim 39 distinguishes for reasons of record concerning “wherein one of the wells connected by the microfluidic structure has a bottom that is higher than at least one other well.

In addition, Claim 1 would distinguish over Pfof et al ‘690, as well as all other prior art if amended by insertion of “and adapted to provide parallel flow of plural fluids in at least one well” after “well plate” in line 5 of the claim. Such limitation is supported on page 6, line 1 through page 7, line 3 of the instant Specification. It is noted that such limitation would encompass the embodiments of the microfluidic structure comprising an “H-filter” as well as comprising a “T-sensor” and numerous other embodiments.

### ***Response to Arguments***

6. Applicant's arguments filed on April 24, 2003 have been fully considered but they are not persuasive.

With regard to Pfof et al, it is firstly argued that there is no teaching of a microfluidic structure adapted to contact the well plate. However, Pfof explicitly recites a plurality of forms of contact between well plate and microfluidic plate thereabove in column 9, lines 31-39.

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It is also argued that Pfoest et al does not teach a circuit port hole fluidly communicating with wells of the well plate. However, it is submitted that such teaching is shown in column 7, lines 49-56 of the reference

Arguments directed towards Dubrow '336 are persuasive.

### *Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

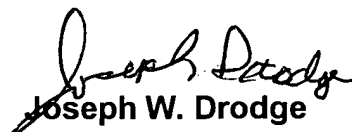
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Drodge whose telephone number is (703) 308-0403. The examiner can normally be reached on Monday-Friday from approximately 8:30 AM - 4:45 PM.

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The fax phone number for this Group is (703) 872-9310 or (703) 872-9311 for after final submissions. When filing a FAX in Tech Center 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

  
Joseph W. Drodge  
Primary Examiner  
Art Unit 1723

JWD  
May 8, 2003